



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

NOV 18 2016

Eric Opiela, Esq.  
Eric Opiela PLLC  
6612 Manzanita St  
Austin, TX 78759

RE: MUR 6944

Dear Mr. Opiela:

On June 25, 2015, the Federal Election Commission ("Commission") notified your clients, Jose Adan Farias, Aquiles J. "Jimmy" Garza, Mario Bracamontes, and Arturo J. Cortez, (collectively, "Respondents"), of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended. On November 14, 2016, based upon the information contained in the complaint, and information provided by the respondents, the Commission decided to exercise its prosecutorial discretion to dismiss the complaint and close its file in this matter. Accordingly, the Commission closed its file in this matter on November 14, 2016.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). The Factual and Legal Analysis, which more fully explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Don Campbell, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Lisa J. Stevenson  
Acting General Counsel

BY: Jeff S. Jordan  
Assistant General Counsel  
Complaints Examination and  
Legal Administration

Enclosure  
Factual and Legal Analysis

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## FACTUAL AND LEGAL ANALYSIS

MUR 6944

## Integrated Border Services

**ATTACHMENT 2**  
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1 argue that IBS is a Texas Limited Liability Company, and the funds were drawn from a United  
2 States bank.<sup>2</sup> *Id.* at 1, 3-4. They state that IBS has its registered address in Texas, and “like  
3 many businesses in [the] border community,” it operates in both Texas and Mexico. *Id.* at 3-4.  
4 The Candidates did not believe the contribution was prohibited, but refunded it on May 1, 2015,  
5 before the Complaint was filed, “out of an abundance of caution.” *Id.* at 1, 4. The Candidates  
6 attached a copy of the refund check issued to IBS, but not the contribution check itself.<sup>3</sup> *Id.* at 6.  
7 IBS did not file a response.

8 **B. Legal Analysis**

9 The Act and Commission regulations prohibit a foreign national from making a  
10 contribution — directly or indirectly through any other person — in connection with an election  
11 to any political office.<sup>4</sup> The term “foreign national” includes “a partnership, association,  
12 corporation, organization or other combination of persons organized under the laws of or having  
13 its principal place of business in a foreign country.”<sup>5</sup> The Commission’s regulations further  
14 provide that a “foreign national shall not direct, dictate, control, or directly or indirectly  
15 participate in the decision-making process of any person . . . with regard to . . . election-related  
16 activities.”<sup>6</sup> This prohibition includes “decisions concerning the making of contributions,  
17 donations, expenditures, or disbursements.”<sup>7</sup> The Act’s prohibition against contributions by

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<sup>2</sup> The Response included a Certificate of Fact from the Office of the Secretary of State of Texas, certifying that IBS filed Articles of Organization as a domestic LLC in Texas in 2001, and that its registered address is in Hidalgo, Texas. *Id.* at 5.

<sup>3</sup> The campaign finance reports that the Complainant submitted as a supplement to the Complaint list this \$100 payment made to IBS on May 1, 2015, under “Campaign Expenses.” Compl., Attach. 2 at 4, 12, 31, 37.

<sup>4</sup> 52 U.S.C. § 30121(a)(1)(A), (B); 11 C.F.R. § 110.20(b), (c).

<sup>5</sup> 52 U.S.C. § 30121(b)(1); 22 U.S.C. § 611(b).

<sup>6</sup> 11 C.F.R. § 110.20(i).

<sup>7</sup> *Id.*

foreign nationals applies to any election for political office, including state and local offices.<sup>8</sup> Additionally, the Act also prohibits persons from knowingly soliciting, accepting, or receiving a contribution or donation from a foreign national.<sup>9</sup>

The available information is insufficient to determine whether IBS is a foreign national entity.<sup>10</sup> IBS is an LLC registered in Texas, however, it also operates in Mexico, and there is no information, other than the Candidates' assertion, that its registered office in Texas is its principal place of business. Even if IBS is not a foreign national entity, there is no information indicating whether foreign nationals participated in the decision to make the contribution. As to the Candidates, the \$100 check they received bore a Mexican address, and they refunded the contribution about 70 days after they received it, several weeks before the Complaint was filed, but apparently after the time provided for in the Commission's regulations.<sup>11</sup>

Under these circumstances, and in light of the *de minimis* amount at issue, and in furtherance of the Commission's priorities relative to other matters pending on the Enforcement docket, the Commission exercises its prosecutorial discretion and dismisses the allegations pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985).

<sup>8</sup> *United States v. Kanchanalak*, 192 F.3d 1037, 1049 (D.C. Cir. 1999) (concluding that the Commission has consistently interpreted 2 U.S.C. § 441e (now 52 U.S.C. § 30121) as applicable to federal, state, and local elections).

<sup>9</sup> See 52 U.S.C. § 30121(a)(2); 11 C.F.R. § 110.20(a)(4), (g). The Commission's regulations provide that "knowing" acceptance of a foreign national contribution in violation of the Act includes circumstances in which a person is "aware of facts that would lead a reasonable person to inquire whether the source of funds solicited, accepted or received is a foreign national, but the person failed to conduct a reasonable inquiry."

11 C.F.R. § 110.20(a)(4)(iii). Here, the Respondents admit that the contribution check bore a Mexican address, which likely would have led a reasonable person to inquire whether the contributions came from a foreign national.

<sup>10</sup> IBS did not respond to the Complaint. See *supra*, footnote 2, Texas Secretary of State Certificate of Fact.

<sup>11</sup> See 11 C.F.R. § 103.3(b)(2).